

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2007-356-WS - ORDER NO. 2008-103

FEBRUARY 15, 2008

IN RE: Application of Palmetto State Utility Services, Inc. for a Certificate of Public Convenience and Necessity) ORDER APPROVING) APPLICATION FOR A) CERTIFICATE OF) PUBLIC CONVENIENCE) AND NECESSITY AND) SETTLEMENT) AGREEMENT
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I. INTRODUCTION AND PROCEDURAL HISTORY

This matter comes before the Public Service Commission of South Carolina (hereinafter the "Commission") on: (1) the Application of Palmetto State Utility Services, Inc. ("PSUS") for a Certificate of Public Convenience and Necessity to Provide Water and Sewerage Service filed September 27, 2007; and (2) the proposed Settlement Agreement ("Agreement") filed by PSUS and the Office of Regulatory Staff ("ORS") (together as the "Parties") on January 24, 2008.

The Commission's Docketing Department instructed PSUS to publish a prepared Notice of Filing and Hearing, one time, in newspapers of general circulation in the area affected by PSUS's Application. The Notice of Filing described the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion as a party of record. PSUS filed with the Commission an Affidavit of Publication

demonstrating that the Notice of Filing and Hearing had been duly published in a newspaper of general circulation in the area affected by PSUS's Application.

No Petitions to Intervene were filed in this case in response to the Notice of Filing and Hearing. ORS is a party of record in this proceeding. S.C. Code Ann. § 58-4-10(B) (Supp. 2007). ORS and PSUS are the only parties of record in the above-captioned docket.

As a result of certain settlement negotiations, the Parties have determined that their interests are best served by settling this matter under the terms and conditions set forth in the attached and incorporated Agreement, Order Exhibit 1. By signing the Agreement, all counsel acknowledged their respective clients' consent to its terms. The Agreement provided that the Parties viewed the terms of the Agreement to be just and reasonable.

The Parties appeared before the Commission for a public hearing on January 31, 2008. Marcus A. Manos, Esq. of Nexsen Pruet, LLC appeared with Justin M. Ganderson, Esq. of McKenna Long & Aldridge LLP (admitted pro hac vice) on behalf of PSUS. Shealy Reibold, Esq. and Jeff Nelson, Esq. appeared on behalf of ORS. The Commission received the Agreement, the pre-filed testimony of McClellan Harris III (Senior Vice-President of the Applicant), the live testimony of Granville R. Hodges, Jr. (Vice-President of Operations for the Applicant) and statements of counsel.

II. THE APPLICATION AND TESTIMONY

PSUS seeks a Certificate of Public Convenience and Necessity to provide water distribution and wastewater collection services on Fort Jackson, a federal military base

located in Columbia, South Carolina.¹ The parent corporation of PSUS, American States Utility Services, Inc. (“ASUS”), was awarded a contract by the Federal Government to acquire ownership in and take over operation/maintenance of the water distribution and wastewater collection systems at Fort Jackson.² ASUS will novate this contract to PSUS.

The ultimate parent company of PSUS is American States Water Company, an investor-owned holding company presently providing water, electric, wastewater and related services to nearly 300,000 customers in five states. American States Water Company, through its subsidiary ASUS, has bid for and been awarded certain water and sewerage utility privatization contracts on military installations in Texas, Maryland, and Virginia. Ultimately, ASUS novated such contracts with the Federal Government to ASUS’s subsidiary companies incorporated in those jurisdictions. In each of those states, the ASUS subsidiary companies sought and received permission to become a regulated public utility under the requisite state’s law.

PSUS seeks to be regulated by this Commission for four reasons:

1. Regulation by state utility commissions is consistent with PSUS’s parent corporation’s business practices throughout the country and provides confidence to the Federal Government that the utility services provided at military installations will meet at least the minimum standards of quality required by this Commission;

¹ Upon information and belief, Fort Jackson was annexed into the City of Columbia in or around 1968. The City of Columbia is located in Richland County.

² 10 U.S.C. § 2688 provides the United States with the authority to convey such utility systems to private companies.

2. While PSUS only has one paying customer under the contract (the Federal Government), military, residential and commercial end-users will receive water and sewerage services as a result of the contract. Regulation by this Commission provides end-users with the ability to submit their complaints/grievances with this Commission in lieu of having to go through military base bureaucracy which is currently, under the direction of Congress, leaving the utility business and assigning it to private contractors such as PSUS;

3. Regulated utilities may receive certain tax treatment on contributions in aid of construction, which may or may not be awarded to unregulated utilities by the Internal Revenue Service and other tax authorities; and

4. The contract between PSUS and the Federal Government requires PSUS to comply with all local and state laws. PSUS believes seeking regulation is consistent with the spirit of that contract, and further that the Department of Defense supports PSUS's and its fellow subsidiaries' desire to become regulated utilities in each requisite state.

PSUS currently has no plans to extend service beyond the limits of Fort Jackson. Should business opportunities arise for PSUS to acquire and operate water or wastewater systems not on federal property at Fort Jackson, PSUS understands that it must apply to the Commission for authority for such expansion with notice to ORS. PSUS also understands that the waivers of certain regulations and requirements of the Commission approved by this Order and agreed to in the Agreement would not apply to service provided to any customer other than the Federal Government in South Carolina.

The contract for the provision of water and wastewater services at Fort Jackson transfers ownership in the systems to and places responsibility for operating, maintaining, and renovating the systems with PSUS for 50 years. Pursuant to a study done by the United States, it is expected that the ultimate cost to the government of operating, maintaining, and renovating the water and wastewater systems at Fort Jackson will be less under the contract than it would have been had the United States Army continued to operate, maintain, and renovate the systems itself. The obligations of PSUS to provide services and maintain and upgrade the system at Fort Jackson are guaranteed by American States Water Company.

In its Application, PSUS requests that the Commission waive certain requirements normally applicable to a water or sewerage utility because the only customer of PSUS is the Federal Government. ORS, pursuant to the Agreement, consents to the waivers requested so long as PSUS serves no customer other than the Federal Government in South Carolina. The general areas of regulation and reporting from which PSUS seeks waivers are those regarding rates and charges, cost justifications, schedules of costs, financial statements showing plant investment, depreciation schedules, pro formas of income and expense, the filing of a performance bond, statement by a professional engineer regarding the system, and the customer bill pro forma. Given that the contractual charges to the Federal Government related to the operation, maintenance, and renovations of the systems are monthly fixed price amounts,³ and that PSUS is acquiring already operational systems, PSUS suggests that the above conditions

³ In addition, PSUS will perform certain initial capital upgrades to the systems and charge the Federal Government certain fixed amounts for such upgrades.

should be waived and ORS consents to the same, so long as the terms of the Agreement are met.

III. DISCUSSIONS AND FINDINGS

The Commission considered the Application of PSUS and its Exhibits, the Agreement, the testimony presented and pre-filed, and the statements of counsel. Upon consideration of all these materials, the Commission finds that it is in the public interest to grant a Certificate of Public Convenience and Necessity to PSUS for the provision of water and sewerage services on Fort Jackson. By granting the Certificate of Public Convenience and Necessity and regulating PSUS, the end-users of the water and sewerage services have a regulatory remedy to seek resolution of problems and stated minimum service quality requirements. Further, regulation by this Commission serves the goals of the Federal Government's utility privatization initiatives--to decrease costs while maintaining quality to end-users. The waivers requested by PSUS, as modified by the Agreement, are consistent with the fact that PSUS has only one paying customer and will own, operate, maintain, and improve an existing water distribution and wastewater collection system. Pursuant to the Agreement, PSUS will: file annual reports as required by Regulation 103-512.1 and 103-712.1, file a utility representative form (SCORS/Form 2007) and keep the form updated, and seek written authorization from the South Carolina Department of Health and Environmental Control on or before April 1, 2008, to transfer all applicable permits to PSUS for operation of the water and sewerage service systems located on Fort Jackson. The provision of a corporate guarantee by American States Water Company to the Federal Government provides a sufficient substitute for any

performance bond(s). Finally, pursuant to this Order, PSUS's Application, and the Agreement, PSUS may not serve any customer other than the Federal Government without coming before this Commission and first receiving a new or amended certificate as may be appropriate. The waivers granted in this Order do not apply to any prospective service provided by PSUS to any customer other than the Federal Government.

IT IS THEREFORE ORDERED:

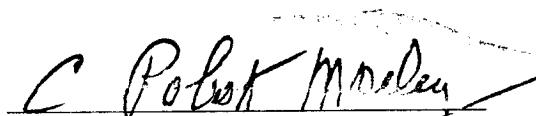
1. That the Application of PSUS for a Certificate of Public Convenience and Necessity to operate water and wastewater systems on Fort Jackson is granted pursuant to the conditions and waivers discussed above and in the Application as modified by the Agreement;
2. That the Agreement between ORS and PSUS is approved and incorporated into this Order; and
3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:


C. Robert Moseley, Vice-Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2007-356-WS

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SC PUBLIC SERVICE
COMMISSION

IN RE:

Application of Palmetto State Utility Services,
Inc. for Certificate of Public Convenience and
Necessity.

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made by and among the Office of Regulatory Staff ("ORS") and Palmetto State Utility Services, Inc. ("PSUS") (collectively referred to as the "Parties" or "Party").

WHEREAS, PSUS filed an Application for a Certificate of Public Convenience and Necessity on September 27, 2007;

WHEREAS, on October 2, 2007, counsel for ORS entered a Notice of Appearance in this matter;

WHEREAS on October 9, 2007, the Commission issued a Notice of Filing and Hearing and established a return date of November 12, 2007, for the filing of letters of protest or petitions to intervene and established a hearing date of January 31, 2008;

WHEREAS, on December 19, 2007, PSUS pre-filed the direct testimony of McClellan Harris, III with the Commission;

WHEREAS, the Parties to this Agreement¹ are the only parties of record in the

¹Although the novation of the contract with the United States from American States Utility Service ("ASUS") to PSUS is still pending, PSUS expects this novation agreement to become effective in the near future. As such, ASUS is not a necessary party to this Agreement.

above-captioned docket and there are no other parties of record in the above-captioned proceeding;

WHEREAS, the Parties have engaged in discussions to determine if a settlement of this proceeding would be in their best interest and, in ORS's case, in the public interest;

WHEREAS, following those discussions, the Parties have each determined that their interests, and ORS has determined that the public interest, would be best served by settling the above-captioned proceeding under the terms and conditions set forth below:

1. The Parties agree that PSUS's Application and exhibits to the Application are incorporated into this Settlement Agreement and made a part hereof;
2. The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of PSUS's witness without cross-examination by ORS;
3. PSUS will provide annual reports, per Sections 103-512.1 and 103-712.1 of the South Carolina Code of Annotated Regulations, to allow ORS to verify that PSUS's sales related to water and sewer services in South Carolina are made strictly to the federal government.
4. PSUS will file a Utility Representative Form (SCORS /Form 2007) as found at <http://www.regulatorystaff.sc.gov/ORSCContent.asp?pageID=672> (the ORS's website) and update the form as necessary.
5. PSUS will agree that ORS's consent to the waivers requested in the Application will become null and void should PSUS serve any customers in South Carolina in addition to the federal government.

6. PSUS understands that if it intends to provide water and sewer services off-base or to customers other than the federal government in South Carolina, PSUS will be required to submit certain additional information and request the approval of the South Carolina Public Service Commission (the "Commission").

7. PSUS will contact Jeff deBessonnet of the South Carolina Department of Health and Environmental Control ("DHEC"), or his replacement if Mr. deBessonnet is no longer employed by DHEC in his current capacity, by not later than April 1, 2008, and request that he provide a letter stating that the water and sewer systems located at Fort Jackson are authorized by DHEC to provide water and sewer service.

8. Given the unique circumstances of the application and the financial guaranty already provided by American States Water Company to American States Utility Services, Inc. (PSUS's parent corporation), PSUS will not be required to post performance bonds to acquire/operate/maintain/expand/improve the water and sewer systems at Fort Jackson for the federal government. The above-referenced guaranty is satisfactory to the federal government in lieu of a performance bond. PSUS understands that this performance bond issue will be revisited should PSUS offer services off-base or to customers other than the federal government in South Carolina.

9. PSUS agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

10. The Parties agree to cooperate in good faith with one another in recommending to the Commission that this Agreement be accepted and approved by the Commission as a fair, reasonable and full resolution of the above-captioned proceeding. The Parties agree to use reasonable efforts to defend and support any Commission order

Commission decline to approve this Agreement in its entirety, then any Party desiring to withdraw from this Agreement may do so without penalty.

12. This Agreement shall be interpreted according to South Carolina law.

13. Each Party acknowledges its consent and agreement to this Agreement by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of this Agreement. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Agreement.

WE AGREE:

Representing and Binding the Office of Regulatory Staff

Shealy Boland Reibold 1/23/08
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WE AGREE:

Representing and Binding Palmetto State Utility Services, Inc.

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